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Attorneys for Plaintiff
MATT SMITH

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MATT SMITH, Plaintiff, v. U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, Defendant.	Case No. ________ **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATION OF THE FREEDOM OF INFORMATION ACT, 5 U.S.C. § 552 et seq.**

INTRODUCTION

1. Matt Smith ("Plaintiff" or "Smith"), on behalf of the Center for Investigative Reporting ("CIR"), brings this action under the Freedom of Information Act, 5 U.S.C. § 552 *et seq*., as amended ("FOIA"), to obtain an injunction requiring the United States Agency for International Development ("USAID") to respond to a FOIA request sent by Plaintiff to USAID via e-mail on December 28, 2016 ("Request"), and to promptly disclose the requested records.

2. The Request seeks records concerning the USAID's communications about organizations that, on information and belief, use funds obtained — directly or indirectly — from the United States Department of Agriculture ("USDA"). This action is necessary because USAID

has not provided Smith with a determination as to whether it will comply with the Request, although more than 20 business days have elapsed since USAID received the Request. A true and correct copy of the Request is attached as **Exhibit A**.

JURISDICTION

3. This Court has subject-matter jurisdiction over this action and personal jurisdiction over the parties under 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 701-706, and 28 U.S.C. § 1331.

VENUE

4. Venue in the Northern District of California is proper under 5 U.S.C. § 552(a)(4)(B) as Plaintiff resides within this District in Emeryville, California. For the same reason, venue also is proper under 28 U.S.C. § 1391(e).

5. Assignment to the San Francisco Division is proper under Civil Local Rule 3-2(c) and (d) because a substantial portion of the events giving rise to this action occurred in Alameda County, given that the Request was sent from Emeryville, California, within this District.

PARTIES

6. Plaintiff Smith is an investigative reporter employed by CIR in Emeryville, California. Founded in 1977, CIR has received multiple awards for its reporting and has twice been named a finalist for a Pulitzer Prize.

7. USAID is a federal agency within the meaning of 5 U.S.C. § 552(f). Smith is informed and believes that USAID has possession, custody, or control of the requested records.

FACTS

8. On December 28, 2016, in connection with newsgathering activities concerning the USDA's funding decisions and oversight concerning USDA grantee Planet Aid, Smith sent the Request to USAID via e-mail.

9. The Request was directed to, among other USAID recipients, foia@usaid.gov – the e-mail address publicly designated by USAID to receive FOIA requests. *See* USAID, "Freedom of Information Act (FOIA)," available as of February 2, 2017 at https://www.usaid.gov/foia-requests.

10. The Request sought copies of the following records: "communications during the

years 2010 - 2015 involving USAID staff members in Malawi discussing, reporting on, and or communicating with organizations belonging to what is called the Humana People to People movement." *See* Exh. A.

11. The Request made clear that the requested records include "draft emails, emails, draft memos, memos, draft letters, letters, draft reports, and reports." *See* Exh. A.

12. In the Request, Smith named the pertinent Humana organizations, specifying that they include Development Aid People to People Malawi ("DAPP Malawi"), Humana People to People ("Humana"), and Planet Aid Inc. ("Planet Aid"). *See* Exh. A.

13. Smith further indicated in the Request that responsive records should include, but were not limited to, communications involving specific USAID and USDA employees. To help USAID respond, Smith provided, as search terms, the names of the following agency employees, along with their e-mail addresses:

a. Cybill Sigler, of USAID;

b. Colin Miller, of the USDA;

c. Kate Snipes, of the USDA; and

d. Ron Croushorn, of the USDA. *See* Exh. A.

14. Smith further indicated in the Request that responsive records should include, but were not limited to, communications involving specific employees or agents of the Humana organizations. To help USAID respond, Smith provided, as search terms, the names of the following agents or employees of the Humana Organizations, along with several of these individuals' e-mail addresses:

a. DAPP Malawi country director Lisbeth Thomsen;

b. DAPP Malawi Partnership Manager Charlotte Danckert;

c. DAPP Malawi clothes and shoes manager Ole Thomsen;

d. Humana Partnerships Director Marie Lichtenberg;[1] and

e. Planet Aid executive director Ester Neltrup. *See* Exh. A.

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[1] The Request also sought communications concerning Ms. Lichtenberg as they related to her "other capacities," including as a representative of Planet Aid, Humana People to People South Africa, and other organizations. *See* Exh. A.

15. USAID received the Request via e-mail on December 28, 2016. *See* Exhibit A.

16. USAID acknowledged receipt of the Request on December 29, 2016. A true and correct copy of the USAID's acknowledgement of receipt is attached as **Exhibit B**. The acknowledgement of receipt stated that Smith had been placed in the "news media" fee category, exempting Smith from search fees and the duplication fees for the first 100 pages of records produced. *See* Exh. B.

17. In its acknowledgement of receipt, however, USAID did not provide a determination as to whether USAID will comply with the Request. *See* Exh. B.

18. As of February 14, 2017, more than 20 days (excepting Saturdays, Sundays, and legal public holidays) have elapsed since USAID received the Request.

19. As of the filing date of this Complaint, USAID has not notified Smith of a determination as to whether USAID will comply with the Request.

20. Because USAID failed to comply with the 20-business-day time limit provision of FOIA, 5 U.S.C. § 552(a)(6)(A)(i), Smith is deemed to have exhausted his administrative remedies with respect to the Request under 5 U.S.C. § 552(a)(6)(C)(i).

Violation of FOIA for Failure
to Provide a Determination
Within 20 Business Days

21. Smith repeats and re-alleges the allegations contained in paragraphs 1 through 20 above, inclusive.

22. USAID has a legal duty under FOIA to determine whether to comply with a request within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receiving the request, and also has a legal duty to immediately notify the requester of the agency's determination and the reasons therefor.

23. USAID's failure to determine whether to comply with the Request within 20 business days after receiving it violates FOIA, 5 U.S.C. § 552(a)(6)(A)(i), and applicable regulations promulgated thereunder.

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Violation of FOIA for Failure

to Make Records Available

24. Smith repeats and re-alleges the allegations contained in paragraphs 1 through 20 above, inclusive.

25. Smith has a legal right under FOIA to obtain the specific agency records requested on December 28, 2016 and there exists no legal basis for USAID's failure to promptly make the requested records promptly available to Smith, CIR, and the public.

26. USAID's failure to promptly make available the records sought by the Request violates FOIA, 5 U.S.C. § 552(a)(3)(A), and applicable regulations promulgated thereunder.

27. On information and belief, USAID currently has possession, custody or control of the requested records.

WHEREFORE, Plaintiff Smith requests that the Court award him the following relief:

1. Declare that Defendant USAID violated FOIA by failing to determine whether to comply with the Request within 20 business days and by failing to immediately thereafter notify Smith of such determination and the reasons therefor;

2. Declare that USAID violated FOIA by failing to disclose the requested records;

3. Order USAID to immediately disclose the requested records to the public and make copies immediately available to Smith, or, in the alternative, provide for expedited proceedings to adjudicate Smith's rights under FOIA;

4. Award Smith his reasonable costs and attorneys' fees; and

5. Grant such other relief as the Court may deem just and proper.

DATED this 14th day of February, 2017.

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

By: /s/ Thomas R. Burke
THOMAS R. BURKE
BRENDAN N. CHARNEY

Attorneys for Plaintiff MATT SMITH

EXHIBIT A

CIR

Matt Smith <msmith@revealnews.org>

FOIA Request

Matt Smith <msmith@revealnews.org> Wed, Dec 28, 2016 at 11:11 AM
Bcc: "Smith, Pamela" <parringtoncampbell@usaid.gov>, "Sillah, Alecia" <asillah@usaid.gov>, foia@usaid.gov, dejohnson@usaid.gov, Amy Walters <awalters@cironline.org>, "Burke, Thomas" <THOMASBURKE@dwt.com>

I hope this message finds you well.

I'm Matt Smith, staff journalist at The Center for Investigative Reporting.

Please consider this message a request to review records under your agency's purview in accordance with applicable laws.

I wish to review communications during the years 2010 -- 2015 involving USAID staff members in Malawi discussing, reporting on, and or communicating with organizations belonging to what is called the Humana People to People movement; (I will name these organizations more specifically later in this message.)

This includes draft emails, emails, draft memos, memos, draft letters, letters, draft reports, and reports. (Search terms **in bold.)**

This includes, but is not limited to, communications involving USAID staff member **Cybill Sigler**
csigler@usaid.gov.
cybler97@msn.com

This also includes but is not limited to communications involving the following USDA-FAS staff members:
Colin Miller (colin.miller@fas.usda.gov)
Kate Snipes (Kate.Snipes@fas.usda.gov)
Ron Croushorn (Ron.Croushorn@fas.usda.gov)

This includes mention of and/or communication with the NGO **Development Aid People to People (DAPP) Malawi.** This includes **DAPP Malawi** country director Lisbeth Thomsen, DAPP Malawi Partnership Manager **Charlotte Danckert,** and DAPP Malawi clothes and shoes manager **Ole Thomsen.**
(The following is Ms. Thomsen's/DAPP Malawi's info, for purposes of producing search terms in seeking records responsive to my request.

Lisbeth Thomsen,

Director, ***Development Aid from People to People in Malawi,***

Private Bag 342, Chichiri, Blantyre 3 Malawi

Phone: ***+ 265-996-0306***

E-mail: ***lt@africa-online.net*** *)*

This includes mention of and/or communication with the organization **Humana People to People**, including Humana People to People Partnerships Director **Marie Lichtenberg.**
This also includes mention of and/or communication with Lichtenberg in other capacities, including representative of **Planet Aid** Inc. USA, **Humana People to People South Africa,** and other organizations.

This includes mention of and/or communication with the US nonprofit Planet Aid Inc. This includes communications with or about Ms. Lichtenberg, and Planet Aid executive director **Ester Neltrup.**
Here is Planet Aid's info, for purposes of producing search terms in seeking records responsive to my request.

Program Contact:

Ms. Marie Lichtenberg

International Partnerships

Planet Aid, Inc. & Humana People to People

Emails:

mariel@chembada.co.zw
mariel@humana.org
mariel2008@earthlink.net
marie.lichtenberg@gmail.com

Cell: + ***27-73-200-5690***

*Cell: + **1 202 386 21 28***

Contact at U.S. Headquarters

*Ms. **Ester Neltrup***

President of the Board, Planet Aid, Inc.

*E-mail: **eneltrup@planetaid.org***

Cell: + 1-703-447-0335

If you have any questions, or if there are ways I could clarify or simplify this request while still obtaining the information I seek, please do not hesitate to contact me at msmith@revealnews.org, and at 415-685-9704.

Kindly,
Matt

EXHIBIT B

From: **Frazier, Kimberly** <kfrazier@usaid.gov>
Date: Thu, Dec 29, 2016 at 1:45 PM
Subject: USAID FOIA Request No. F-00051-17 - Email Assigning Specialist
To: msmith@revealnews.org

December 29, 2016

Dear Mr. Smith:

This acknowledges receipt of your December 28, 2016 Freedom of Information Act (FOIA) request to the United States Agency for International Development (USAID). Specifically, you requested records involving USAID staff members in Malawi discussing, reporting on, and or communicating with organizations belonging to the Humana People to People movement. The date range for records search is January 1, 2010 to December 31, 2015.

Fees

FOIA requesters are ordinarily required to pay for search, review, and duplication of responsive records. After review of your request, you have been placed in the 'news media' fee category. You will not be charged for search, no fee for review; and $.20 per page for duplication (first 100 pages free and $.20 per page thereafter). Since the only applicable fee is duplication, and USAID routinely furnishes responsive records to the FOIA requester in electronic format, it's most likely there will be no duplication fees to assess.

FOIA Specialist

Your request has been assigned to Makeda Weeks-Titus, FOIA Specialist. You may contact Makeda by email at mweekstitus@usaid.gov or by phone on (202) 216-3248. Please reference the tracking number cited above in any future correspondence. If additional information is required to assist USAID search for responsive records, Makeda will contact you.

Thank you for your patience and interest in USAID.

Sincerely,

Kimberly D. Frazier
Senior FOIA Specialist
Bureau for Management
Office of Management Services
Information and Records Division